

MANDATE

04-12316

USDC/MA
Young, J

United States Court of Appeals For the First Circuit

No. 06-1055

KEVIN P. LOUGHMAN,
Plaintiff, Appellant,

v.

MAURA MAHONEY, ET AL.,
Defendants, Appellees.

Before

Boudin, Chief Judge,
Selya and Lipez, Circuit Judges.

JUDGMENT

Entered: October 12, 2006

Kevin P. Loughman appeals the district court's dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), of his diversity complaint asserting claims of defamation and slander per se under Massachusetts state law. We review the district court's dismissal de novo, "accept[ing] as true the well-pleaded factual allegations of the complaint, [and] drawing all reasonable inferences in favor of the non-moving party." Stanton v. Metro Corp., 438 F.3d 119, 123 (1st Cir. 2006). "'A complaint should not be dismissed unless it is apparent beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.'" Id. at 123-24 (quoting Greene v. Rhode Island, 398 F.3d 45, 48 (1st Cir. 2005)) (internal quotation marks and citation omitted).

After careful review of the record and the parties submissions, we affirm essentially for the reasons stated by the district court at the October 27, 2005, hearing; taken in context, the single reference to Loughman as a "lunatic" was not reasonably capable of defamatory meaning. See Lyons v. Globe Newspaper Co., 415 Mass. 258, 266-67 (1993) (holding that statements of rhetorical hyperbole are not defamatory); Bratt v. International Business Machines Corp., 392 Mass. 508, 517 n.13 (1984) (agreeing with courts that have held that statements imputing mental disorder which are made in an oblique or hyperbolic manner are not defamatory). Further, to the extent Loughman contends that the

district court's handling of the Rule 12(b)(6) motion violated his due process rights, we find his arguments to be without merit.

Affirmed. See 1st Cir. Loc. R. 27(c).

By the Court:

Richard Cushing Donovan, Clerk.

By: MARGARET CARTER
Chief Deputy Clerk.

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk

MA
Deputy Clerk

Date: 11/3/06

[cc: Kevin P. Loughman, David Bliss Wilson, Esq.]